

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **September 10, 2007**

Time: **10:30am**

Place: State Office Building, Rm. 2112

Members

Commission Members

(Attendees = x)

xChair, Glen W. Roberts, *Utah Cnty* xDavid M. Lattin, *Salt Lake Cnty* xR. Curt Webb, *Cache Cnty*
xCanyon W. Anderson, *Davis Cnty* xGarry M. Goodsell, *Iron Cnty*

Department Staff

(Attendees = x)

xJohn E. "Mickey" Braun, Jr. xPerri Babalis xDarrel Powell xMark Kleinfield
Ass't Commissioner *AG Legal Counsel* *Dir. Market Conduct* *Admin. Law Judge*

Gerri Jones xSheila Curtis xJilene Whitby
MC Examiner *MC Examiner* *PIO/Recorder*

Public

David Moore Grace Carlsen Jeff Williams Joseph McPhee
Bob Rice James Seaman Larry Blake Jeff Jensen
Al Newman Hilam Martin Tylne Martin

AGENDA

- I. **Welcome and Introductions** / Glen Roberts, Chair
Glen began the meeting at 10:30a.m.
- II. **Adoption of Minutes of Previous Meeting**
 - The first bullet, third sentence in Section VIII should read, "They were generally in favor of having a single fiduciary until they realized the lender would be required to send money to another agency without a closing protection letter.
 - Section IX should read 10:45am.
 - David made a **motion** to accept the minutes with these changes and Garry seconded it. The vote was unanimous.
- III. **Review & Concur with Licensee Report**
 - Canyon asked the reason for the reinstatements? Mickey said the department does not put a reason. Most were lapsed due to non-payment of the renewal fee. Canyon asked why the Lapse Date column was empty. Mickey said he would find out.
 - Glen said he thought Marilyn Morgan Hillery, as noted on the third page, should be Mary Hillary Morgan.
 - Curt made a **motion** to approve the report and Canyon seconded it. The vote was unanimous.
- IV. **Number of Cases Open & Closed**
 - Glen explained to the members of the public in attendance that the Commission does not have authority to investigate violations. The report gives the Commission an idea of the case flow and how long it takes the department to investigate and close cases.
 - Canyon asked the status of case #54735. **Sheila said she would check on the status with Gerri**, who is working on the case, and let him know.
 - The ratio of open to closed cases is up from July report; August: 13 open and 31 closed.
- V. **Review & Concur with Enforcement Case Report** / Mark Kleinfield

- Millcreek Land Title Insurance, Inc., has been issued a Stipulation & Order. At the time the license lapsed it was on probation for 24 months for failure to file its rates. They were also fined \$5,000. The department recommended a fine of \$2,500, and a ten-day suspension of their license.
- Glen asked how the 10-day suspension would be enforced? Glen suggested including in the order the requirement that Millcreek submit their trust account transactions for the period of suspension. Mickey said the department could go in after the suspension and do this. He said the department would check Millcreek's records after the suspension period to ensure that they did not do insurance business during the suspension period.
- Curt noted that the law required Millcreek not violate any of the laws, not just those that are similar. Curt **moved** to increase the fine to \$5,000 and Garry seconded it. Canyon thought a 10-day suspension did the same thing. Curt said they could work around the 10-day suspension. The vote was unanimous in favor of the \$5,000 fine and suspension.

VI. **Old Business**

- **Free Leads for Loans - Setting a Limit?**
Pending
- **Consumer Protections in a Split Closing**
Pending

VII. **New Business**

- **Discuss Comments From Split Closing Hearing**
 - Glen explained that the rule comes as a result of hearings and discussions on the single fiduciary rule.
 - Canyon asked Perri for her opinion on Mr. Blanchard's memorandum of September 6, 2007 that Mr. Blake had handed out during the rule hearing this morning. He also asked her if commercial closings are excluded or not from the Split Closing rule. Do we need to amend the rule, craft something specifically for commercial deals, or ask the Real Estate Division to consider this issue?
 - Curt thought the instructions were market neutral. Every move we make will have a market consequence.
 - Glen did not agree that splits were okay. Since they could not be eliminated his goal was to create some order to split closings. He did not think the REPC solved the problem. The instructions could be used in commercial deals. They can be altered to fit varying circumstances. Curt said the instructions could be replaced if a REPC was involved or an attorney had his own instructions. Al said most attorneys would not allow their clients to sign the instruction form on a commercial agreement.
 - Scott from the Real Estate Division said in the hearing that the Real Estate Division requires realtors to use their forms. Jack said that real estate law allows instructions to be written by either the client or the attorney.
 - The concern was expressed that if more than one party is writing instructions the verbiage will not agree. Garry and Glen felt splits were not good. Jeff said title companies that are bad would be bad with or without splits.
 - Curt said few commercial transactions were splits. Consumers will not draft their own forms. It is best to give the rule a try. We need to do something. Jack said that if the Real Estate Division decides to draft something new into the REPC relating to this then they could provide a place for two title companies to sign. Glen noted that the form could be amended. Al said it was not needed.
 - Blake was concerned that it referenced lenders. The rule allows the lender to change what the buyer and seller have agreed to. By including the lender in the agreement you complicate things. Scott said language in rule is permissive and does not give lender any more authority than they have now.

- Curt made a **motion** to not amend the rule with the justification that instructions can be amended as needed. The buyer's signature confirms or justifies the request for a split closing. There may be some holes but they can be found and corrected while the rule is in place. Canyon said no motion was needed when no changes were being made. Curt agreed and withdrew his motion. **Glen asked Perri** to provide the commission with an opinion on the Troy Blanchard memorandum.
- David said he would like to **discuss**, at a later date, **when the agreement, completion and signing of the instructions should take place**. It should not be later than the date of the closing. He thought it should be at the initiation of the contract.
- Canyon said the definition of the word "closing" should be the same as that used by realtors.
- Perri said the rule needed to be approved by the vote of the Commission. Canyon asked that it be **put on next month's** agenda and voted on then.
- Curt announced he had been appointed to the legislature. He asked Perri to see if he had to be eliminated from the Commission immediately as a result. Since he and Garry will not be available for the next meeting on October 9, the meeting date was changed to October 15.
- **\$60 Per Diem Reimbursement** / Mickey
Mickey explained the issue of \$60 available to each Commission member for each Commission meeting they attended. The department was asked to research how to **make this available to the members**.
- **Rewriting of R590-153 *Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business***
Commission members were asked to review this rule before the next meeting and send in costs for realtor and lender service leads.
- **Can We Hold Earnest Money?** / Glen
Earnest money is to be held in a trust fund for as long as necessary. This seemed to be a non-issue.
- **Lawyers Title Ins. Corp vs. America West Title Agency, Inc. Civil Proceeding**
Perri didn't know why this had been sent to Commission members except possibly to make them aware of the action. She did not think they needed to get involved.

VIII. **Other Business** from Committee Members

- **Mickey asked that "Licensee Examinations" be added to the next agenda.**

IX. **Reminder:**

X. **Adjourned:**

XI. **Next Meeting** October 15, 2007, 9am, Room 1112 of the State Office Building.

Next Meeting

9:00 a.m.

October 15, 2007

November 19, 2007

December 10, 2007